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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re K.C., et al., Persons Coming
Under the Juvenile Court Law.

B291186

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Los Angeles County
Super. Ct. No. DK05624A-B

Plaintiff and Respondent,

v.

M.F.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Steven E. Ipson, Juvenile Court Referee. Reversed in part; affirmed in part.

Linda J. Vogel, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine Miles, Assistant County Counsel, Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Appellant M.F. (mother) appeals the juvenile court's jurisdictional findings as to her son K.C. (the minor), which findings served as the basis for the court's subsequent removal order and family law custody order giving sole physical custody of the minor to his father, K.C., Sr. (father).¹ Mother contends the court's jurisdictional findings under Welfare and Institutions Code section 300, subdivisions (b) and (j),² are not supported by substantial evidence. We agree and reverse the court's jurisdiction, disposition, and custody order as to the minor. Although mother also noticed an appeal challenging the court's disposition as to her daughter, A.A., mother made no argument on appeal concerning that portion of the order and has therefore forfeited that challenge. We affirm the court's order as to A.A.

FACTS AND PROCEDURAL BACKGROUND

At the outset of these proceedings, mother had two children: five-year-old A.A. and the minor, who was then seven years old. She gave birth to a third child in January 2018. Each of the three children has a different father.

The family came to the attention of the Department of Children and Family Services (Department) on July 24, 2017, after mother left five-year-old A.A. home alone for an extended period of time. After receiving a call from mother's neighbors, Sheriff's deputies arrived at mother's apartment and waited there for more than an hour before taking A.A. to the Sheriff's

¹ Father did not participate in the present appeal.

² All undesignated statutory references are to the Welfare and Institutions Code.

station. A.A. was detained from mother and placed in foster care. The minor was not at mother's apartment when mother left A.A. alone. In fact, by mutual agreement, the minor was residing for the summer with father, father's long-term girlfriend, and their children.

The Department filed a petition as to both A.A. and the minor alleging mother failed to provide adequate supervision and parental care to A.A. which placed both A.A. and the minor at risk of serious physical harm, damage, danger and neglect. Allegations relating to the minor were set forth under section 300, subdivisions (b) [failure to protect] and (j) [abuse of sibling]. At the detention hearing, the court detained the minor from mother, found father to be the presumed father of the minor, and ordered the minor released to father. The court ordered monitored visitation for mother twice a week with discretion to liberalize.

The Department's subsequent investigation did not uncover any information suggesting the minor had ever been left alone by mother or had been subjected to any other form of neglect. To the contrary, father and his girlfriend both told the Department they had no concerns about the minor being in mother's custody. Father requested a joint custody order but was willing to take sole custody of the minor if it would result in the Department closing its case.

As to mother, the Department did not present any evidence that mother engaged in risky behavior (drug use or criminal activity) or had a medical condition that was likely to interfere with her ability to provide adequate supervision to her children. And mother visited consistently and appropriately with the minor throughout the pendency of the proceedings. The

Department did not liberalize mother's visitation, however, because she did not consistently attend and complete court-ordered parenting and domestic violence classes. The Department ultimately recommended that the court issue a removal order as to the minor.

The court conducted the adjudication hearing on June 19, 2018.³ With respect to jurisdiction, counsel and the court focused almost exclusively on the allegations relating to alleged domestic violence between mother and A.A.'s father. Further, counsel did not separately address any issue relating to the minor nor did the court separately analyze the minor's circumstances with respect to jurisdiction. The court found true the allegations relating to mother's conduct of leaving A.A. at home alone and found jurisdiction as to both A.A. and the minor. The court ordered the minor removed from mother and placed with father, with mother to have unmonitored visitation three times a week. The court then terminated jurisdiction over the Department's objection and issued an order giving sole physical custody of the minor to father. Mother appeals.

³ The proceedings were substantially delayed after the Department discovered that mother and A.A.'s father had a history of domestic violence and became aware of an incident between them which occurred in April 2017. The court ordered the Department to investigate and the Department filed two amended petitions adding allegations relating to these issues. The court, however, ultimately found the additional allegations relating to A.A.'s father to be untrue.

DISCUSSION

Mother contends the court's jurisdictional findings regarding the minor are not supported by substantial evidence. We agree.

1. Standard of Review

“When an appellate court reviews the jurisdictional or dispositional findings of the juvenile court, it looks to see if substantial evidence, whether contradicted or uncontradicted, supports the findings. [Citations.] The appellate court must review the evidence in the light most favorable to the trial court's order, drawing every reasonable inference and resolving all conflicts in favor of the prevailing party. [Citation.] Substantial evidence ‘means evidence that is “reasonable, credible and of solid value; it must actually be substantial proof of the essentials that the law requires in a particular case.” ’ [Citation.]

“Appellant has the burden to show that the evidence was not sufficient to support the findings and orders. [Citation.] The reviewing court may not reweigh the evidence or express an independent judgment. [Citation.] Rather, the reviewing court must determine whether ‘a reasonable trier of fact could have found for the respondent based on the whole record.’ [Citation.]” (*In re Alexzander C.* (2017) 18 Cal.App.5th 438, 446.)

2. The court's jurisdictional findings are not supported by substantial evidence.

A child may be declared a dependent of the court where “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child” (§ 300,

subd. (b)(1).) In addition, the court may assert jurisdiction over a child if “[t]he child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.” (§ 300, subd. (j).) Under each of these subdivisions, the court was required to find by a preponderance of the evidence that either the minor had suffered some serious harm or was at a substantial risk of future harm due to mother’s abuse or neglect. We conclude insufficient evidence supports the court’s findings as to the minor.

First, no evidence was presented in this case suggesting the minor was abused or neglected by mother in the past. The minor was not present when mother left A.A. alone on July 24, 2017, and there is no evidence mother had *ever* left the minor alone. Further, the Department did not suggest, let alone prove, that the minor had been subjected to any other sort of abuse or neglect by mother. The Department’s primary concern, in fact, was mother’s relationship with A.A.’s father and violent incidents occurring between them.

We also see no evidence in the record—or any reasonable inference to be drawn from the evidence before us—which would support a finding that the minor was at a *substantial* risk of future abuse or neglect by mother. As noted, the only conduct that forms the basis of the court’s exercise of jurisdiction over the minor is the fact that mother left her five-year-old daughter

unattended for more than an hour on at least one occasion. Without minimizing the potentially dangerous consequences of that decision, we note that the minor was almost nine years old at the time of the adjudication hearing. That fact alone should have prompted the court to consider whether mother's prior neglectful conduct—even if repeated in the future with the minor—would have placed him at a *substantial* risk of harm. We see no indication in the record before us which would support such an inference. And it is evident from the transcript of the adjudication hearing that the court did not consider the minor's specific circumstances as required under section 300, subdivision (j). Rather, it appears the court simply assumed that if the evidence demonstrated the minor's sibling had been neglected, jurisdiction over the minor should be presumed. (Cf. *In re Dakota J.* (2015) 242 Cal.App.4th 619, 632 [noting that “where more than one child is the subject of a dependency proceeding, the juvenile court must analyze each child's circumstances independently at the dispositional stage”].)

3. The court's error was prejudicial.

We cannot reverse the court's judgment unless its error was prejudicial, i.e., it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error. (See, e.g., *In re Dakota J.*, *supra*, 242 Cal.App.4th at p. 630.) In this case, the prejudice from the court's improper jurisdictional findings is significant because those findings formed the basis of the court's removal order and subsequent exit order giving sole physical custody of the minor to father.

As we explained in *In re Dakota J.*, “[a] parent's right to care, custody and management of a child is a fundamental liberty

interest protected by the federal Constitution that will not be disturbed except in extreme cases where a parent acts in a manner incompatible with parenthood. [Citations.]’ [Citation.]” (*In re Dakota J.*, *supra*, 242 Cal.App.4th at p. 630.) Further, “the constitutional right of parents to make decisions regarding their children’s upbringing precludes the state from intervening, in the absence of clear and convincing evidence of a need to protect the child from severe neglect or physical abuse. [Citation.]” (*Id.* at p. 631.) And as we observed, the consequences of a removal order can be severe. Not only will a parent carry the stigma attendant to a finding of child abuse or neglect, but he or she may also risk losing parental rights altogether. In the present case, the court’s removal order, coupled with its family law exit order giving sole physical custody of the minor to father, substantially limits mother’s custody rights concerning the minor. To alter that situation, mother must (in the absence of a reversal here) seek relief in the family court where she will have the burden to demonstrate some change of circumstance supporting a new custody order—without the benefit of appointed counsel, as is provided in dependency proceedings. We have no difficulty concluding that circumstance constitutes prejudice in the present case.

DISPOSITION

The court's jurisdiction and disposition order as to the minor is reversed. The matter is remanded with directions to the court to vacate the adjudication and custody orders relating to the minor and issue a new order finding the jurisdictional allegations untrue and dismissing the petition as to the minor. The order as to A.A. is affirmed.

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LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

DHANIDINA, J.